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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 306

ALFRED COOKMAN MINER, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF JULIA A. MINER, DECEASED,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT OF THE APPLICATION.

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ALFRED COOKMAN MINER, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF JULIA A. MINER, DECEASED,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

Petitioner Alfred Cookman Miner, individually and as Successor Trustee under the Last Will and Testament of Julia A. Miner, Deceased, prays the issuance of a writ of certiorari to review a judgment of the Circuit Court of Appeals for the Seventh Circuit affirming an order entered upon appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Summary Statement of the Matter Involved.

Petitioner, Alfred Cookman Miner, was appointed on November 10, 1933, as Successor Trustee of a trust established by the Will of his mother, Julia A. Miner (R. 111-115). The assets of the trust had been completely dissipated by the prior Trustee, Central Republic Trust Company, and its predecessor corporations (R. 16-22; 25-32). The court appointing Miner expressly reserved determination of issues raised by the accounting. Thereafter, on February 21, 1938, Miner filed his claim in the instant case asserting a liability against the stockholders of the Central Republic Trust Company and its predecessor corporations. While his claim against the stockholders was still pending, Miner agreed to accept a claim against the assets of the bank in the amount of $25,000.00, provided that it should be without prejudice to his claim against the stockholders (R. 23-25). A decree was entered by the court which appointed Miner, finding that breaches of trust had been committed and that the net loss amounted to $25,000.00. The decree directed the filing of a claim in the suit then pending to liquidate the affairs of the Central Republic Trust Company, which had ceased to do business (R. 32-39). Miner, thereupon, filed a petition in the liquidation proceeding and was allowed a claim against the assets of the bank in the amount of $25,000.00 (R. 39-43). The decree of the court, after reviewing the previous proceedings, expressly found that the acceptance of the claim in the amount of $25,000.00 against the assets in the receiver's hands should be without prejudice to the right of Miner to continue to prosecute his claim in a larger amount against the stockholders in the present case; that the amount had been determined by agreement without proof; that part of the agreement was that the settlement should not prejudice the prosecution of the claim against the stockholders; that the fixing of the claim at $25,000.00 was not

to be deemed an adjudication of the amount of damage suffered by the trust estate but merely a determination of the extent of participation by the trust estate in the assets in the receiver's hands; that any amount paid by the receiver should be credited upon the claim allowed against the stockholders (R. 39-43). In the federal court the Master heard evidence as to the merits of the claim (R. 15-32; 70-111) but held that Miner's recovery against the stockholders was limited by the amount which he had agreed to accept as his participation in the assets in the receiver's hands (R. 44-48). The Master's Report was approved by the District Court (R. 54-55). The Circuit Court affirmed the ruling of the District Court.

Jurisdiction of the Court.

The jurisdiction of this court is invoked under Section 240-A of the Juricial Code, as amended by the act of February 13, 1925. The decision hereby sought to be reviewed was entered May 18, 1942. The opinion (R. 120-124) is reported at 128 Fed. (2d) 242.

Questions Presented.

1. Whether the federal court is justified in ignoring and holding ineffectual an express reservation of right against a co-obligor, by relying upon Illinois cases which have been overruled and ignoring numerous sources revealing a uniform and well understood principle of Illinois law.

2. Whether the federal court is required to give full faith and credit to the judgment of the Circuit Court of Cook County, Illinois, entered April 13, 1940, expressly reserving the right of the claimant to proceed against the stockholders of the Central Republic Bank and Trust Company for a greater amount than $25,000.00.

Reasons Relied Upon for the Allowance of the Writ.

1. The Circuit Court of Appeals has decided an important question of Illinois law in conflict with applicable local decisions by relying upon cases which have been overruled and ignoring a subsequent line of decisions by the intermediate courts of review in Illinois.

2. The Circuit Court has refused to give full faith and credit to the judgment of an Illinois court of general jurisdiction.

Prayer.

WHEREFORE, Petitioner prays that this court may issue its writ of certiorari to review the aforesaid judgment of the Circuit Court of Appeals for the Seventh Circuit.

ALFRED COOKMAN MINER, individually and as Successor Trustee under the Last Will and Testament of Julia A. Miner, Deceased,

Petitioner,

GEORGE EDWARD LEONARD,

Counsel for Petitioner.